



State of California

Board of Equalization
Legal Division-MIC: 82

Memorandum

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To : Mr. David Gau, MIC:64

MAR 19 1999

Date: March 18, 1999

From : Mary Ann Alonzo *MAA*

LEGAL DIVISION
PROPERTY TAXES

Subject: **Effective Date of Inflation Factor Rounding Requirement in Section 51**

This is in response to your request for a legal opinion as to whether a 1996 amendment to section 51 of the Revenue and Taxation Code is retroactive. As will be discussed herein, the requirement in section 51, subdivision (a)(1)(B) to round the annual inflation factor, applied to base year values determined pursuant to section 110.1, to the nearest one-thousandth of one percent is applicable as of the effective date of the legislation, January 1, 1997; therefore, it should not be applied retroactively.

You also have asked the following questions which also will be addressed in this memo:

I. Should the Board advise assessors to redo prior years' inflation adjustments for all the years since 1985 "to comply" with the requirement?

Answer: No.

II. Alternatively, should the Board advise assessors to apply the nearest one-thousandth of one percent inflation factor only to escape assessments discovered after January 1, 1997, the effective date of the legislation?

Answer: No.

LAW AND ANALYSIS

Section 51 provides in relevant part as follows:

(a) For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to section 110.1, the taxable value of real

property shall, except as otherwise provided in subdivision (b) or (c), be the lesser of:

(1) Its base year value compounded annually since the base year by an inflation factor, which shall be determined as follows:

(A) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living as defined in Section 2212.

(B) For any assessment year commencing after January 1, 1985, and prior to January 1, 1998, the inflation factor shall be the percentage change, rounded to the nearest one-thousandth of 1 percent, from December of the prior fiscal year to December of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

(C) For any assessment year commencing on or after January 1, 1998, the inflation factor shall be the percentage change, rounded to the nearest one-thousandth of 1 percent, from October of the prior fiscal year to October of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

(D) In no event shall the percentage increase for any assessment year determined pursuant to subparagraph (A), (B), or (C) exceed 2 percent of the prior year's value.

Legislative History

The answers to your questions are found in the legislative history of section 51, which has been amended several times.

1982 -1984 - April to April time period for measuring inflation factor.

Section 51 was enacted to provide, in relevant part, that the inflation factor was the percentage change in the cost of living as defined in section 2212. Under section 2212, the percentage change was to be determined using the time period from April to April. (Stats. 1981, Ch. 377, in effect January 1, 1982). Thus, from January 1, 1982 through December 1984, the inflation factor was measured from April to April for purposes of factoring base year values in determining assessed values.

1985- 1998 - Time period changed to December to December.

The first amendment to section 51 in 1984 legislation changed the time period used to compute the inflation factor to December to December by substituting that period in subdivision (a)(1)(B) for the former reference to section 2212 to allow more time for assessors to produce the assessment roll. (Stats 1984, Chapter 1164, in effect January 1, 1985) This amendment is the source of the language now causing confusion as to whether this provision is retroactive: "For any assessment year commencing after January 1, 1985". The purpose of this language was to indicate that the amendments to section 51 enacted in 1984 would take effect prospectively, commencing the following January of 1985. Thus, the inflation factor was calculated from December to December for the years 1985 to 1998.

1995 - Board Rounding Policy Adopted

Meanwhile, the Board adopted a policy of rounding the inflation factor in 1995 in anticipation that the inflation percentage increase of the California Consumer Price Index for the 1995 lien date would fall below two percent. The Board advised that the inflation factor should be rounded to nearest one hundredth of one percent for the 1995-1996 assessment year. Rounding of the inflation factor to the nearest one hundredth of one percent was advised by the Board for 1996-97 also.¹ Assessors were informed of the Board's policy in Letters to County Assessors, which, of course, were advisory only.

1997 - Rounding of inflation factor enacted into law, no change in time period.

Subsequently, the Board proposed legislation in 1996 to enact its rounding policy into law through amendment of subdivision (a)(1)(B) of section 51. (Stats. 1996, Chapter 1087) However, prior to its enactment, the bill was amended by the Senate Revenue and Taxation Committee to modify the rounding requirement to the nearest one-thousandth of one percent to address concerns about property tax revenue losses caused by the rounding. From January 1, 1997 through December 1997, the inflation factor was to be calculated from December to December and rounded to the nearest one thousandth of one percent.

1998 - Time period changed to October to October and rounding continued.

Section 51 was amended again in 1997 to add the language "and prior to January 1, 1998" to subdivision (a)(1)(B), and subdivision (a)(1)(C) was added to modify the time period for determining the inflation factor on and after January 1, 1998. Thus, for the 1998 assessment year forward, the inflation factor rounded to the nearest one-thousandth of one

¹ For 1996-97, Letter to County Assessors, Final CCPI Announced for 1996-97, No. 96/17 advised that the inflation percentage increase of 1.1148 should be rounded to the nearest one-hundredth of one percent, or to 1.11 percent.

percent is to be calculated from October of the prior fiscal year to October of the current fiscal year. (Stats. 1997, Chapter 940, effective January 1, 1998)

I. Should the Board advise assessors to redo prior years' inflation adjustments for all the years since 1985 "to comply" with the requirements?

No. The purpose of the language, "For any assessment year commencing after January 1, 1985" added to subdivision (a)(1)(B) of section 51 was to indicate that the amendments to section 51 enacted in 1984, such as the time period change to December to December, would take effect prospectively, commencing the following January of 1985. Thus, this language preexisted the amendment which required rounding to the nearest one thousandth of one percent enacted in the 1996 legislation. Review of the Board's 1996 legislative bill file discloses no legislative intent to require retroactive application of the rounding requirement of subdivision (a)(1)(B). Accordingly, the Board should not advise assessors to redo prior years' inflation adjustments for all the years since 1985 "to comply" with the rounding requirement. I have spoken with Rose Marie Kinnee about the necessity for legislation for purposes of clarifying that the rounding requirement of subdivision (a)(1)(B) of section 51 applies prospectively.

II. Alternatively, should the Board advise assessors to apply the nearest one-thousandth of one percent inflation factor only to escape assessments discovered after the effective date of the legislation?

No. The Board should advise assessors to apply the rounded inflation factor per subdivision (a)(1)(B) of section 51 to both timely assessments and escape assessments for the time period beginning with January 1, 1997, which is the effective date for the rounding requirement amended into subdivision (a)(1)(B) for 1997-98. (Stats. 1996, Chapter 1087) For the 1995-96 and 1996-97 assessment years when the inflation factor was less than two percent, the Board advised assessors that the inflation factor should be rounded to the nearest one hundredth of one percent.² Accordingly, the Board's policy of rounding the inflation factor to nearest one hundredth of one percent would apply for both timely assessments and escape assessments for the 1995-1996 and/or 1996-1997 assessment years. The inflation percentage increase for 1997-98 was 2 percent, so rounding was not required.³

² For 1996-97, Letter to County Assessors, Final CCPI Announced for 1996-97, No. 96/17 advised that the inflation percentage increase of 1.1148 should be rounded to the nearest one-hundredth of one percent, or to 1.11 percent.

³ Letter to County Assessors, Final CCPI Announced For 1997-98, No. 97/04.

To conclude, I recommend that legislation be considered for the 1999-2000 legislative session to clarify that subdivision (a)(1)(B) of section 51, as amended in 1996 as to rounding, applies prospectively. I hope this memo addresses your concerns. If you have further questions, please do not hesitate to contact me.

MAA:jd

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